

Your ref:
My ref: SS/jlb/D22801
Doc ref: 592,135.00
Your letter received:



Ms L Evans

Sent by e-mail: request-34938-a5c1a669@whatdotheyknow.com

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24 June 2010

Dear Ms Evans

REQUEST FOR INFORMATION UNDER FREEDOM OF INFORMATION ACT 2000
Internal review of decision to withhold information

Further to my e-mail of 27 May 2010 I write to inform you that in accordance with the Council's procedure, a review has now been undertaken of the decision not to disclose to you information requested on 10 May 2010.

After comprehensive consideration of the matter, the conclusion of the review is that the decision to withhold the information from you was the correct one. This is because the information in question is exempt from disclosure by virtue of Sections 41 and 43 of the Freedom of Information Act 2000. The information was initially refused on the grounds that disclosure could prejudice the commercial interests of both the Council and Flexi International and was therefore exempt by virtue of Section 43. However, after considering the matter I am of the view that in addition the information is exempt from disclosure in accordance with Section 41 of the Act, because it was provided to Council in confidence. My reasons for applying these exemptions are detailed below.

Section 41 – Information provided in confidence

The information you have requested is information that was provided to the Council by a third party (Flexi International). This information was provided to the Council in confidence by Flexi following a competitive procurement process after which Flexi (or rather its predecessor The Dodge Group Limited) agreed to supply the Council with the general ledger computer application software (the "Software") subject to the terms of a contract. The contract contains a clause under which the Council agrees to treat this information as confidential. The structure of the Software (including the headings and definitions used in the ledger) is commercially sensitive to Flexi and therefore was supplied to the Council on the grounds that it would be kept confidential. If the Council were to disclose this information to a third party then Flexi International could bring a claim for damages against the Council for breach of confidence. The Council has consulted with Flexi International about disclosure of this information and they have made it clear that they consider this information to have been provided to the Council in confidence and would not like it to be disclosed. It is



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for these reasons that I am satisfied that the information is exempt from disclosure. This exemption does not require the public interest test to be considered.

Section 43 – Commercial interests

The information was initially refused to you on the grounds that disclosure could prejudice the commercial interests of both the Council and Flexi International and was therefore exempt from disclosure by virtue of Section 43 of the Act. Having discussed this with the Head of ICT, reviewed the contractual documents and consulted with Flexi International, I am satisfied that the information is commercially sensitive to both parties.

In respect of the Council, as the information requested is essentially the structure of the Council's financial system disclosure of this information could be used to obtain unauthorised access to the system thus allowing a third party to have full access to information which is commercially sensitive to the Council. Whilst the Council is happy to release specific financial information when requested, it does not consider it appropriate, nor in the Council's commercial interests to release information that could allow an individual to have full unauthorised access to this type of information. The Council takes the security of such information very seriously and seeks to reduce as far as possible the risk to the Council in this respect.

In respect of Flexi International, disclosing the requested information could give a competitor an unfair advantage in the market place and would therefore prejudice Flexi's ability to compete against its commercial rivals. This is clear in the intention of the contract between the Council and Flexi in that the Council is contractually bound not to disclose details of the Software to third parties. I have also consulted with Flexi International on this matter and they have confirmed that they consider the information to be commercially sensitive and would not like it to be disclosed.

I am also satisfied that the public interest test has been correctly applied in this case. Whilst it is in the public interest for the Council to be transparent about how it spends public money, it is not in the public interest for the Council's commercial interests to be prejudiced. The Council is happy to consider requests for information about specific amounts of money spent by the Council as generally it is in the public interest for such details to be released. However, in these circumstances the Council considers that disclosure of this information does not serve that public interest as rather than providing information about how the Council has spent public money, it would be providing information that could compromise the security of its financial system, leading to commercially sensitive information being disclosed. The Council also considers that it is not in the public interest for the Council's suppliers to have their ability to compete in the market place prejudiced. It is important that there is competition for public sector contracts to ensure that the Council receives value for money. These reasons against disclosure outweigh the reasons for disclosure.



Further complaint

If you are not happy with the outcome of this review then you are entitled to appeal to the Information Commissioner's Office, at the following address:

FOI Compliance Team (complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113

Yours sincerely

PP. 

Sian Stroud

